

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 45 OF 2003

Mrs. Cristina Virginia Gomes,
major of age, widow of late Crispino
Joaquim Marquis, residing near Church,
Santa Estevam, Ilhas, Goa

..... Appellant.

V/s

1. Mrs. Lilia Dias,
major, wife of Tritonio Tuscano,
r/o Near Church, St. Estevam,
Ilhas, Goa.

2. Annie Marquis,
major, having address at Near
Church, Santo Estevam, Goa.

3. Tessy Marquis
major, having address at Near
Church, Santo Estevam, Goa

4. Assumpta Marquis,
major, having address at Near
Church, Santo Estevam, Goa

..... Respondents.

Mr. Ajit R. Kantak, Advocate for the appellant.

Mr. J. E. Coelho Pereira, Sr. Advocate with Mr. S. Karpe, Advocate for
respondent No.1.

CORAM : S.S. PARKAR, J.

DATE : 17TH JUNE, 2005.

ORAL ORDER :

Heard both sides. In the suit filed by the respondents plaintiffs, the defendants had lodged a counter claim. The trial Court dismissed the suit as well as the counter claim by Judgment and Order dated 29th July, 1988 in Regular Civil Suit No.23/1979. Only the defendant had filed an appeal in the District Court being Regular Civil Appeal No.50/1988. That appeal was allowed, setting aside the Order of the trial Court, disallowing the counter claim. The order passed by the appellate Court dated 22.11.1999 while disposing of the appeal, is as follows :

“ Appeal is allowed. Order dated 29.7.88 disallowing counter claim is set aside. The counter claim of the appellants is decreed and mandatory injunction granted. The respondents to demolish the compound wall which is in the strip of land of plot no.15 and this plot is in between plot nos. 16 and plot A (plot no.14) and which touches the northern wall of the appellants' house.”

2. The original plaintiff has filed this Second Appeal, challenging the aforesaid order. The contention raised on behalf of the appellant/plaintiff is that the plaintiff cannot be ordered to demolish the wall which was not on the plot of land belonging to the defendants. It is not in dispute that the plaintiffs are owners of Plot No16 and defendants are owners of Plot No.14. It is also not in dispute that the compound wall though constructed by the plaintiffs is situated on Plot No.15

belonging to the third party who was not impleaded in the suit or the appeal, nor even in this appeal.

3. From the plan and the photographs produced, it appears that some portion of the compound wall constructed by the plaintiffs touches the wall of the house of the defendants and, therefore, the appellate Court has rightly directed the plaintiffs to demolish that portion of the compound wall which touches the northern wall of defendants' house. I find no irregularity in the impugned order, nor any question of law, much less substantial question of law arises in this appeal. The appeal seems to have been filed because the impugned order of the appellate Court prima facie appears to have decreed the counter claim of the appellants, seeking mandatory injunction against the appellant/plaintiff to demolish the laterite compound wall near the northern wall of the defendants' house, which is stated to have been constructed in the plot of the defendants though it is in plot No.15 belonging to third party. It is not disputed that the compound wall is constructed by the plaintiffs and it touches the wall of the house of the defendants. In that event, injunction was rightly granted against the plaintiffs. The appellate Court has directed the plaintiffs to demolish only that portion of the compound wall which touches the northern wall of the appellant's house and not the entire compound wall as argued by the appellant. Thus, the appellate Court has decreed the counter claim for demolishing only

that portion of the compound wall constructed by the plaintiffs which touches the northern wall of the respondent's house. This compound wall which touches the defendants' house is on the strip of land of Plot No.15, passing in between plot Nos.14 and 16. In other words, the appellate Court has not directed the plaintiff to demolish the entire compound wall, but only that portion of the compound wall which touches the house of the defendants.

4. In the circumstances, there is no substance in the appeal. The appeal is, therefore, rejected. Interim order granted by this Court on 3rd February, 2005 shall stand vacated.

S.S. PARKAR, J.

ssm